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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,775	07/15/2003	Thomas E. Jackson	22562-2	8780
24256	7590	08/15/2005	EXAMINER	
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			KEENAN, JAMES W	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/619,775

Applicant(s)

JACKSON ET AL.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/2/03
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. Applicant's election with traverse of Group I, claims 1-12 and 16-20, in the reply filed on 5/25/05 is acknowledged. The traversal is on the ground(s) that the examiner has failed to show that the inventions are "independent and distinct" (emphasis original). This is not found persuasive because it is well established that even though the word "and" is used in the statute (35 USC 121) when referring to the propriety of a restriction requirement, this has been interpreted as actually meaning "or", and thus only independence or distinctness need be shown. See MPEP 808.01 and 816. Applicant also argues that the same art classifications would have to be searched for both inventions since they both are classified in class 414. This is not persuasive. Class 414 has hundreds of subclasses. There is no convincing showing by applicant that both groups of inventions would require the same search.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 13-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/25/05.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the adjustable assembly (claims 7 and 17) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The disclosure is objected to because of the following informalities: page 5, line 29, states that the support surface can be moved along both horizontal and vertical axes relative to the base. However, both axes are in a horizontal plane.

Appropriate correction is required.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 1-12 and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 16, it is not clear what is meant by "friction reducing members"; in what manner do they reduce friction?

In claims 6 and 18, the recitation that the support surface can be adjusted relative to the base along horizontal and vertical axes is incorrect; as noted above, both axes are in a horizontal plane.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Spath (US 5,846,043).

Spath shows a dolly 10 with base 20 supported by roller devices 15, support surface 21, control frames 18 and 19 which pivot (about their longitudinal axes) between positions for selectively limiting movement of a container 22 on the support surface, and a locking mechanism (the bent ends of elements 18-19) which has at least one locking position for holding the control frame in a stop position. Spath also shows dolly 32 with base 23, roller devices C, support surface 30, control frame 29, and locking mechanism

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comprised of the bent ends of element 29. Alternatively, cradle 26 could be considered the control frame with locking mechanism 28.

Re claim 11, rollers 31 are considered to comprise an unloading extension.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spath in view of Johnson (US 4,120,411, cited by applicant).

Spath does not show horizontal adjustability of the support surface relative to the base.

Johnson shows a dolly with base A, rollers 12, support surface B with friction reducing rollers 42, and control frame 80. The support surface is adjustable along a horizontal axis relative to the base.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the dolly 32 of Spath by providing horizontal adjustability of the support surface relative to the base, as shown by Johnson, to enable easier unloading.

Re claim 11, note that the support surface of Spath can be adjusted along a vertical axis relative to the base. However, even if the claim is amended to indicate that the support surface is adjustable along two horizontal axes, further modification of Spath to include such a feature would be considered a simple design expediency, in view of Johnson, to enable even easier unloading.

12. Claims 12, 16, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spath in view of Eaddy (US 2,448,300, cited by applicant).

As best understood, Spath shows the locking mechanism 28 to have only one locking position.

Eaddy shows a dolly with a locking device 37 having multiple locking positions 38, each corresponding to an operational position of the carrier frame 30.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Spath with a locking mechanism having at least three positions, as shown by Eaddy, to provide improved unloading capability.

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Re claim 16, although not explicitly disclosed as such, the locking mechanism is considered to be a "gate lock", absent any structural limitations of the term.

13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spath in view of Eaddy, as applied to claim 16 above, and further in view of Johnson.

This rejection utilizes the same obviousness rationale set forth in paragraph 11 above with respect to claim 11.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

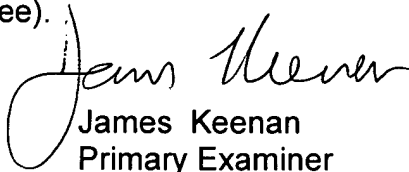
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on (schedule varies).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eillen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
7/28/05